In re Patent Application of:
MCCARTHY ET AL.
Serial No. **10/779,402**
Filed: **FEBRUARY 13, 2004**
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REMARKS

The Examiner is thanked for the careful examination of the present application. Independent Claims 1, 9, and 17 have been amended to include the subject matter of dependent Claims 7, 13, and 21 respectively. Independent Claim 14 has been similarly amended. Dependent Claims 7, 13, and 21 have been canceled for consistency. In view of the amendments and arguments presented in detail below, it is submitted that all claims are patentable.

I. The Amended Claims

The invention, as recited in independent Claim 1, for example, is directed to a communications system that includes a plurality of servers connected together in a network for processing a plurality of different job types having respective different resource usage characteristics associated therewith. Each server determines its own respective health metric based upon at least one job being processed thereby and weighs the health metric based upon the respective resource usage characteristic of the at least one job. The servers map the weighted health metrics for different resource usage characteristics to a common scale. The communications system includes a dispatcher a dispatcher for collecting the commonly scaled weighted health metrics from the servers by polling the servers for the weighted health metrics and distributing jobs to the servers based thereon.

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Amended independent Claim 9 is directed to a load distributor for a plurality of servers. Amended independent Claim 14 is directed to a job distribution method for a plurality of servers. Amended independent Claim 17 is directed to a corresponding computer readable medium.

II. The Amended Claims Are Patentable

The Examiner rejected dependent Claim 7, the subject matter of which is now incorporated into independent Claim 1, over a combination of Albert et al. and Richter et al. Albert et al. is directed to a system and method for selecting a server to handle a connection. The method includes receiving at a service manager a connection request intercepted by a network device having a forwarding agent that is operative to receive instructions from a service manager, the connection request having been forwarded from the forwarding agent on the network device to the service manager.

A preferred server is selected at the service manager from among a group of available servers. The preferred server is the server that is to service the connection request. Instructions are sent from the service manager to the forwarding agent. The instructions include the preferred server that is to service the connection request so that the connection request may be forwarded from the network device to the preferred server. The servers send feedback messages to the service manager. The

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service manager uses these feedback messages to perform load
balancing.

The Examiner correctly recognized that Albert et al.
fails to disclose that its servers map the weighted health
metrics for different resource usage characteristics to a common
scale. In an attempt to provide this critical deficiency, the
Examiner combined Albert et al. with Richter et al. Richter et
al. was cited as disclosing the use of different resource usage
characteristics.

Even the selective combination of Albert et al. and
Richter et al., however, fails to disclose all the features now
recited in independent Claim 1. In particular, the combination
fails to disclose a dispatcher for collecting the commonly scaled
weighted health metrics from the servers <u>by polling the servers</u>
<u>for the weighted health metrics</u> and distributing jobs to the
servers based thereon.

The Examiner cited Albert et al. as providing this
feature to the combination. Albert et al., however, does not
discloses the dispatcher polling the servers for the weighted
health metrics. Rather, the servers of Albert et al. send
feedback messages to the service manager without prompting. The
portion of Albert et al. cited by the Examiner as showing this
claimed feature is reproduced below for the Examiner's
convenience.

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> If all of the weights are sent to one server
> before being sent to the service manager, then the
> representative server can normalize the different
> weights from the different servers so that the
> weights express the relative capacity of each
> server to process packets for different virtual
> machines. It should be noted that the server
> weight determination process may periodically
> execute. The process may also execute upon the
> occurrence of certain events such as a spike in
> utilization of one of the virtual machines or the
> server loosing one or more ports.

This portion actually discloses the normalization, by one server, of different weights received from the other servers. Indeed, neither this portion nor any other portion of Albert et al. fail discloses that the dispatcher polls the servers for the weighted health metrics. In fact, Albert et al. does not disclose that the dispatcher polls the servers, or any other part of the system, for any reason whatsoever. Richter et al. likewise fails to provide this feature to the combination.

Accordingly, independent Claim 1 is patentable over the combination of Albert et al. and Richter et al. Independent Claims 9, 14, and 17 contain similar recitations, have been similarly amended, and are therefore patentable for the same reason. The dependent claims, which recite yet further distinguishing details, are likewise patentable and require no further discussion herein.
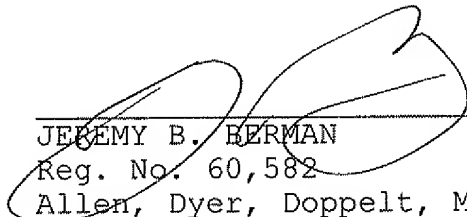
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CONCLUSION

In view of the amendments to the claims and the arguments provided herein, it is submitted that all the claims are patentable. Accordingly, a Notice of Allowance is requested in due course. Should any minor informalities need to be addressed, the Examiner is encouraged to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

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